

§ 1.1524

not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.1526.

§ 1.1524 Comments by other parties.

Any party to a proceeding other than the applicant and Bureau counsel may file comments on an application within 30 days after it is served or an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Administrative Law Judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

§ 1.1525 Settlement.

The applicant and Bureau counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Bureau counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If the Administrative Law Judge approves the proposed settlement, it shall be forwarded to the Commission for final approval.

§ 1.1526 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than excessive demand or substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency embodied an excessive demand or was substantially justified

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shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39899, July 31, 1996]

§ 1.1527 Decision.

The Administrative Law Judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the proceedings, committed a willful violation of law, or otherwise acted in bad faith, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[61 FR 39900, July 31, 1996]

§ 1.1528 Commission review.

Either the applicant or Bureau counsel may seek Commission review of the initial decision on the application, or the Commission may decide to review the decision on its own initiative, in accordance with §§ 1.276 through 1.282 of this chapter. Except as provided in